

**FORMA**

IN THE COURT OF SESSIONS JUDGE, SONITPUR,  
TEZPUR

Present: **Sri Chatra Bhukhan Gogoi, AJS, Sessions  
Judge.**

[Date of the Judgment]  
**05-09-2022**

**[Sessions Case No 52 /2021]**

(Details of FIR/ Crime and Police Station)

Complainant :	STATE OF ASSAM  OR  Sri Tijo Lama
REPRESENTED BY	Learned Public Prosecutor Mr. Munin Chandra Baruah.
ACCUSED PERSONS	1. Michael @ Maikel Horo, S/O- Lt. Sanika Horo, Vill- Panbari T.E. (Welfare Line) P.S. Dhekiajuli, Dist- Sonitpur.
REPRESENTED BY	1) Sri Rupjoyti Baruah, Legal Aid Counsel.

## **FORM B**

Date of Offence	05-01-2020
Date of FIR.	09-01-2020
Date of Charge-sheet	30-04-2021
Date of Framing of Charges	06-09-2021
Date of commencement of evidence	04-10-2021
Date on which judgment is reserved	22-08-2022
Date of the Judgment	05-09-2022
Date of the Sentencing Order, if any	

### **Accused Details**

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
Daily Labour	Michael @ Maikel Horo	10-01-2020	Still in judicial custody.	Section 302/201 IPC.	<b>Acquitted</b>	NIL	2 years 7 months 27 days till today i.e. 05-09-2022.

### Form C

#### A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Sri Ajay Tanti	Seizure Witness.
PW2	Gobinda Mahali	Other Witness.
PW3	George Induwar	Other Witness.
PW4	Bishnu Kheria @ Nepal	Seizure Witness.
PW5	Tijo Lama	Other Witness (Informant).
PW6	Dr. Mridurupam Gogoi	Medical Witness.
PW7	SI Bipul Biswas	Police Witness.
PW8	Sri Kamal Jyoti Borah	Panch Witness.

#### B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

#### C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

## LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

### A. Prosecution:

Sr. No	Exhibit Number	Description
1	Ext -1/ PW1	Seizure List.
2	Ext- 2/ PW5	FIR.
3	Ext- 3/ PW6	Post-Mortem Report.
4	Ext- P-4/ PW7	Sketch Map.
5	Ext. P-4(2) Mark A/ PW7	Place of Occurrence.
6	Ext- P-6/ PW7	Copy of the Challan.
7	Ext- P-7/ PW7	Prayer before the CJM by I.O. (PW7)
8	Ext- P-8/ PW7	Charge-Sheet.
9	Ext- P-9/ PW8	Inquest Report.

### B. Defence:

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

### C. Court Exhibits

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

### D. Material Objects:

Sr. No	Material Object Number	Description
1	Mat. Ext. 1	Bamboo Stick.

**IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR**

**SESSION CASE NO. 52 of 2021**

Under Sections 302/201 of I.P.C  
(Arising out of G. R Case No. 83 of 2020)

**State of Assam**

**-Vs-**

Michael @ Maikel Horo

... Accused Person.

**Present: Sri Chatra Bhukhan Gogoi,  
Sessions Judge,  
Sonitpur :Sonitpur.**

For the State : Mr. Munin Chandra Baruah, Public Prosecutor

For the accused persons : Sri Rupjyoti Baruah, Legal Aid Counsel.

Date of Argument : **22-08-2022.**

Date of Judgment : **05-09-2022.**

**JUDGMENT**

**1.** The brief fact of the prosecution case is that on 05-01-2020 at about 6 PM FIR named accused Michael @ Maikel Horo started quarrelling with the daughter of informant due to some family issues and then assaulted her with lathi and by removing the clothes made her nude and made her to lay outside in nude condition. On 06-01-2020 at about 11.30 AM accused took the daughter of informant to Dhekiajuli CHC but she was declared brought dead by the doctor. Then accused buried the dead body of deceased in the cemetery near the house of accused. Hence the case.

**2.** Following the information, O/C Dhekiajuli Police station registered the case being Dhekiajuli PS case No. 17/2020 u/s 302/201 IPC and started investigation of the case.

**3.** Accordingly, the Investigating Officer visited the place of occurrence, recorded the statement of witnesses u/s 161 Cr.P.C., seized one bamboo lathi size 3ft 4 inch vide M.R. No. 01/2020 (Ext. P-1), drew the sketch map, (Ext. P-4), disinterred the dead body, did inquest by the Circle Officer Kamal Jyoti Borah vide Ext. P-9, sent the dead body for post mortem examination and collected the post mortem report vide Ext. P-3 and on conclusion of investigation, having found prima-facie case, finally laid the charge-sheet (Ext. P-8) against accused Michael @ Maikel Horo u/s 302/201 IPC.

**4.** During the course of trial, when accused appeared in Court, the learned Judicial Magistrate 1<sup>st</sup> Class, Sonitpur, Tezpur, vide order dated 27-07-2021 committed the case record against accused Michael @ Maikel Horo to the Court of Sessions for trial after due compliance of Section 207 Cr.P.C.

**5.** Receiving the case record on committal, registered the same being Sessions Case No. 52 of 2021 and thereafter, having heard the learned lawyers appearing for both sides and on perusal the materials available on record, having found prima-facie case, charges were framed against accused Michael @ Maikel Horo u/s 302/201 IPC. The particulars of the offences on being read over and explained accused pleaded not guilty and claimed trial. In the meanwhile, prosecution was directed to summon the witnesses.

**6.** In the course of trial, the prosecution examined as many as 8 (eight) witnesses in order to substantiate the case against the accused person.

7. Concluding prosecution evidence, accused was examined u/s 313 Cr.P.C. in which accused person denied the prosecution evidence as false and misleading. However, on being asked, accused declined to adduce any defence evidence.

8. **POINTS FOR DETERMINATION :**

*i) "Whether on 05-01-2020 at around 6 PM accused Michael @ Maikel Horo committed murder by causing the death of his wife Albina Horo by repeatedly assaulting her with lathi and thereby committed offence punishable u/s 302 IPC as alleged ?"*

*ii) "Whether on same date and time accused Michael @ Maikel Horo with the intention of screening him from legal punishment cause disappearance of evidence by secretly burring the dead body of his wife Albina Horo and thereby committed offence punishable u/s 201 IPC as alleged ?"*

**DISCUSSION, DECISION AND REASONS THEREOF:**

9. I have heard the arduous argument of the learned lawyers appearing for both sides.

10. In this case, prosecution all together examined 8 (eight) witnesses including the informant, Medical Officer, Investigating Officer & Executive Magistrate who did the inquest on the dead body.

11. During the course of argument, as against the contention of the learned PP that it is a case of murder and prosecution has been able to establish the case as the murder was committed by none other than the accused and it was he who buried the dead body of his wife without

post mortem examination but subsequently, dead body was disinterred and on examination, doctor found that the cause of death of deceased as assault on forehead but the learned counsel appearing for accused contends that, though, the death of deceased was as a result of singular assault but, doctor did not rule out the possibility of sustaining such injury by fall, therefore, counsel for accused vociferously contends that accused has been wrongly framed as the victim died as a result of fall. When there is no eye witness to the occurrence, no conviction can be sustained. Learned defence counsel also submitted that none of the prosecution witnesses has stated that they had seen accused assaulting the deceased and more so, all the prosecution witnesses in their cross-examination, stated that they had come to know about the incident from neighbours and they had no personal knowledge about the incident of assault when it has not been established from which of the neighbours they heard about the incident. Moreover, none of the prosecution witnesses have stated that they had seen the dead body of deceased lying outside in the courtyard in naked condition. PW4 Bishnu Kheria who has immediately rushed to the place of occurrence at about 6 AM while the body of the deceased was still in the courtyard has not deposed either in chief or in his cross-examination that he saw the dead body in naked condition. The I.O. also failed to examine any neighbouring witness from whom the other witnesses have heard about the alleged assault by the accused and keeping the body of the deceased outside for the whole night by removing her cloths. I.O. did not examine the vital witnesses namely the mother and sister of accused who were present in the house on the day of incident. It is the contention of the learned defence counsel that I.O. has admitted in his cross-examination that the statements of PW1 are all contradictory statement and in the present case, all the witnesses being hearsay in nature and the contradiction of witnesses puts the prosecution case under the cloud of doubt as such accused deserve to be acquitted.



**12.** Having heard the rival contentions of learned counsels appearing for both sides and on careful perusal of the evidence of prosecution witnesses, particularly, the Dr. Mridurupam Gogoi (PW6), it transpires that Albina Horo died as a result of singular brain injury sustained on her head. The doctor examined the dead body on 11-01-2020 and on examination found abrasion present over her forehead (3 x 2 cm) & clotted blood over forebrain. No external injury was present. In the opinion of doctor, the death occurred due to brain injury due to blunt trauma, which means, injury was caused by blunt object.

**13.** The evidence of I.O. PW7 S.I. Bipul Biswas reveals that on 09-01-2020 having received ejahar from Tijoo Lama, Inspector of Police Mahendra Mohan Patowari registered a case being Dhekiajuli PS Case No. 17/2020 u/s 302/201 IPC and entrusted him to investigate the case. Accordingly, he visited the P.O., recorded the statement of witnesses u/s 161 Cr.P.C. & having found accused Michael Horo in his residence, he was detained and sent to jail. He also visited the P.O., drew sketch map (Ext. P-4) of which Mark A indicates the place of occurrence. Ext. P-4(2) is the said Mark A. He also deposed that the dead body was disinterred in presence of Executive Magistrate as shown by accused. He recorded the statement of Ajoy Tanti, Gabinda Mohali, George Induwar, Bishnu Kheria @ Nepal at the place of occurrence.

**14.** On perusal of evidence of PW1 Ajay Tanti, PW2 Gabinda Mohali, PW3 George Induwar, PW4 Bishnu Kheria @ Nepal & PW5 Tijoo Lama, it transpires that none of them are eye witness to the occurrence. Evidence of PW1 Ajay Tanti is not worthy of credence in view of the fact that even though in his evidence in chief he stated that accused Michael Horo frequently quarrelled with his wife Albina Horo and on the day of incident they had a quarrel in which accused Michael Horo assaulted his wife Albina with a bamboo lathi and as a result of which she died and accused kept the body of his wife lying in the courtyard for the whole night by removing her clothes but in his cross-examination he stated

that his house is at a distance of 500 meter away from the house of accused Micheal Horo and he did not visit the house of Michael Horo and he did not personally seen the incident. Only neighbour Ranjit Tanti & Nasit Tanti informed him about the same and he do not know whether Albina was dead or alive. Therefore, the evidence of PW1 is of no help for the prosecution.

**15.** PW2 Gobinda Mohali also deposed that the incident occurred on 05-01-2020 and accused Michael Horo & deceased Albina Horo were husband and wife and Michael Horo quarrelled with his wife and after assaulting her removed her clothes and forced her to lay outside the house for which condition of Albina became critical for which she was taken to Dhekiajuli Civil hospital for treatment but doctor referred her to TMCH. However, accused Michael Horo instead of taking her to TMCH took her back to his house where she died and without informing others, Michael Horo buried the dead body of his wife in his compound and one Bishnu Kheria informed him about the same. In his cross-examination, he stated that his house is situated at a distance of 1 km from the house of Michael Horo and he had not seen any quarrel between the husband and wife only heard from other villagers. One Rejina Horo and Kamala Das informed him about the incident on 06-01-2020.

**16.** Evidence of PW3 George Induwar shows that he is also not an eye witness to the occurrence. His evidence is hearsay. In his cross-examination he stated that his house is situated at the distance of 500 meter away from the house of accused and he had no personal knowledge about how the incident occurred as he had not seen the incident. He visited the house of accused only when police visited his house. Therefore, his evidence in chief that the incident occurred on the night of 05-01-2020 and accused assaulted his wife badly and removed her clothes and her condition was serious and taken to Dhekiajuli Civil Hospital has no corroboration.

**17.** Evidence of PW4 Bishnu Kheria also reveals that he visited the house of accused and saw Albina lying on the courtyard and he along with accused Michael Horo and his mother rushed Albina to Dhekiajuli Civil Hospital for treatment but Dhekiajuli Civil Hospital referred Albina to TMCH. However, due to want of money, accused took back Albina to house where she died. Therefore, accused buried the dead body of Albina. During investigation, police seized one bamboo lathi size 3 ft 4 inch in length in his presence and he stood as a seizure witness where he put his thumb impression. In his cross-examination he stated that he cannot remember the date of incident. He visited the house of accused at 6 AM and around 10/15 people were gathered in the house including the sister and mother of accused. He saw Albina lying in senseless condition.

**18.** The evidence of PW5 Tijoo Lama also shows that her evidence is hearsay as she rushed to the house of accused having got the information that her daughter was assaulted by accused and she become serious. She saw the dead body of her daughter lying near the bed covered with clothes. In her cross-examination, she stated that she is illiterate woman and do not know the contents of the FIR and do not know who had written the same. She had not visited the house of accused before the death of her daughter and she do not know under what circumstances her daughter died in the house of accused. She only heard from others that accused killed her daughter.

**19.** In this context, I beg to refer the judgment of our Hon'ble High Court reported in 2019 SCC OnLine Gau 5528 CRL.A(J) 122/2018 (TUNU URANG Vs. THE STATE OF ASSAM) wherein Hon'ble High Court in para 13 held as under:

*"13. In a criminal trial burden is always on the prosecution to prove the guilt of the accused beyond reasonable doubt and Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden. Only when prosecution proves certain fact from which reasonable inference can be drawn*

*regarding certain other facts, which unless explained by the accused Page No.# 5/6 by virtue of his special knowledge, tend to inculpet the accused, in such circumstance the accused owe an explanation, otherwise section 106 of the Evidence Act does not put any burden on the accused to prove his innocence. In the present case evidently prosecution has not been able to prove any fact, from which an adverse inference could be drawn to attribute culpability to the appellant, in absence of any explanation. As already indicated above, the findings of the learned trial court, that the deceased was found with the appellant in his house was perverse. Once, this findings is discarded, there is no other materials on record to attribute any special knowledge to the appellant in respect of the death of the deceased."*

**20.** Moreover, this court also beg to refer a latest judgment of the Hon'ble Supreme Court passed in Criminal Appeal No. 962 of 2011 (Dibaker Nunia & Anr. Vs. The State of Assam) wherein Hon'ble Apex Court in para 19 held as under:

*"19. It remains trite that in such a criminal case, the prosecution is expected to prove its case and to substantiate the charge beyond reasonable doubt. A reasonable doubt is not a mere possible doubt but a fair doubt based upon reasons and common sense. It must grow out of the evidence in the case<sup>1</sup>[Vide: Bhaskar Ramappa Madar & Ors. v. State of Karnataka: (2009) Cri. L.J. 2422 (SC) (at pg. 2431)]. When a reasonable doubt arises in a matter, benefit of doubt must be given to the accused. In the present case, the doubts reasonably arising in the matter had been brushed aside by the High Court on the logic that itself remains unacceptable. The approach of the Trial Court in accepting the testimony of PW-2 and PW-3 with the observations that there was no reason for them to implicate anyone except the real culprit, again, remain that of assumptions which are not compatible with the given set of facts and circumstances."*

**21.** In the present case, after a dispassionate examination of the prosecution witnesses from PW1 to PW8 from close range, it transpires that admittedly, there is no eye witness to the alleged occurrence. Evidences of the witnesses are all hearsay in nature, more particularly, prosecution even failed to examine the family members of accused who were present in the house at the time alleged incident. The evidence emerged in the mouth of the prosecution witnesses create a serious

doubt about the commission of the offence by accused. It was even not established in the mouth of any prosecution witness that on the day of alleged incident, accused was present in his house and it was he who assaulted his wife. Therefore, it is crystal clear that the doubt that has emerged in the instant case is a reasonable doubt based on evidence of the witnesses not a superficial doubt. When the very presence of the accused in the house on the day of incident and in the absence of direct evidence that it was accused who assaulted his wife on her head, it is highly difficult to sustain conviction merely on the basis of surmises and conjectures on the basis of hearsay evidence. The rule of prudence do not permit sustaining conviction in such cases merely on suspicion and in the considered estimation of this court, benefit of doubt in the instant case must go in favour of the accused person.

**22.** In 1984 (4 SCC 116) **Sharad Birdhi Chand Sarda vs State Of Maharashtra** the Hon'ble Supreme Court laid down the five principles regarding circumstantial evidence which is known as panchsheel of the proof as under:

*"3:3. Before a case against an accused vesting on circumstantial evidence can be said to be fully established the following conditions must be fulfilled as laid down in Hanumat's v. State of M.P. [1953] SCR 1091. [163C]*

*1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;*

*2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*

*3. The circumstances should be of a conclusive nature and tendency;*

*4. They should exclude every possible hypothesis except the one to be proved; and*

*5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

*These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a corpus delicti."*

**23.** In the present case, as discussed in the threadbare, the circumstances which are emerged in the present case is totally insufficient to constitute a unbreakable chain so as to rope the accused person with the commission of the offence. As against the allegations made in the FIR (Ext. 2), the evidence emerged in the mouth of the prosecution witnesses during the course of trial are somewhat contradictory and inconsistent so as to form a complete chain of circumstances to hold the accused person guilty. Therefore, it is also not prudent to hold the accused guilty for commission of offences u/s 302/201 IPC based on circumstantial evidence.

**24.** In view of the above discussion and reasons, accused Michael @ Maikel Horo is acquitted from the charge u/s 302/201 IPC on the ground of benefit of doubt and set him at liberty forthwith.

**25.** Since accused was not granted bail during the course of trial, no bail bond has been submitted so, there is no question of compliance of Section 437A Cr.P.C.

**26.** Send back the GR case to the learned committal court.

**27.** Let a copy of the judgment be forwarded to the learned District Magistrate, Sonitpur as provided in section 365 Cr.P.C.

**28.** Judgement is pronounced and delivered in open court under the Hand and Seal of this Court on this **05<sup>th</sup> day of September, 2022.**

**(C.B.Gogoi)**  
Sessions Judge,  
Sonitpur, Tezpur.

Dictated and Corrected by me

**(C.B. Gogoi)**  
Sessions Judge  
Sonipur, Tezpur